INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION
International Arbitration Tribunal

CASE NUMBER 01-21-0000-4309

ARBITRATION PURSUANT TO
THE COMMERCIAL ARBITRATION RULES OF
THE AMERICAN ARBITRATION ASSOCIATION

BETWEEN:

TELECOM BUSINESS SOLUTION, LLC, on its own behalf and derivatively, on behalf of CONTINENTAL TOWERS LATAM HOLDINGS LIMITED, and LATAM TOWERS, LLC, on its own behalf and derivatively on behalf of CONTINENTAL TOWERS LATAM HOLDINGS LIMITED,

Claimants,

vs.

TERRA TOWERS CORP., TBS MANAGEMENT,S.A., DT HOLDINGS INC., JORGE HERNANDEZ and ALBERTO ARZÚ,

Respondents,

and

CONTINENTAL TOWERS LATAM HOLDINGSLIMITED,

Nominal Respondent,

TERRA TOWERS CORP., TBS MANAGEMENT,S.A., DT HOLDINGS INC. derivatively and on behalf of CONTINENTAL TOWERS LATAM HOLDINGS LIMITED,

Counterclaimants,

vs.

TELECOM BUSINESS SOLUTION, LLC, LATAM TOWERS, LLC, F. HOWARD MANDEL, JOHN RANIERI, RYAN LEPENE, and AMLQ HOLDINGS (CAY) LTD.,

Counterclaim Respondents.

-and-

CONTINENTAL TOWERS LATAM HOLDINGS LIMITED,

Nominal Respondent.

AMLQ HOLDINGS (CAY) LTD.,

Counterclaimant,

vs.

TERRA TOWERS CORP. and TBS MANAGEMENT,S.A.

Counterclaim Respondents.

PROCEDURAL ORDER NO. 2024-15 CONCERNING ISSUES AFFECTING THE INTERGRITY OF THE ARBITRATION

A. INTRODUCTION

1. This arbitration has been marked by the unusual circumstances of multiple attacks, by Respondents and unknown persons publicly expressing positions supportive of Respondents, on the integrity of the Tribunal and of this proceeding. Many of these attacks have been made on obscure Internet websites that have published content that appears to be aligned with Respondents' challenges to the integrity of the Tribunal[1] and with

[1] Respondents have alleged that the Tribunal lacks impartiality, in challenges before the ICDR as administrator, directly to the Tribunal and in the context of vacatur proceedings in the U.S. District Court for the Southern District of New York ("SDNY") as well as a plenary suit seeking the Tribunal's disqualification (but not naming the Tribunal as a party) initially filed by Respondents in New York state court and subsequently removed to the SDNY.

Respondents' continuing efforts to portray the Company's CEO as a criminal. Unfortunately, as discussed below, these attacks appear to have accelerated recently.

2. We are mindful of our obligation, as a tribunal responsible for a significant international commercial arbitration, to protect the integrity of the arbitration process – a concept that includes not only the procedures before us, but the enforceability of our awards in national courts to which those awards might be brought for enforcement. *See* AAA Code of Ethics for Arbitrators in Commercial Disputes (2004), Canon 1, para. A ("An arbitrator has a responsibility not only to the parties but also to the process of arbitration itself, and must observe high standards of conduct so that the integrity and fairness of the process will be preserved"). The obligation calls for us to address proactively, given the extraordinary circumstances, apparent "red flags" of serious misconduct that have disrupted and threaten to disrupt the orderly progress of this arbitration. In addition, the recent judgment of the UK High Court, which vacated an $11 billion award on the basis that the award had been procured by fraud and corruption, has prompted considerable recent attention in the international arbitration community to a perceived need for proactive vigilance by arbitral tribunals when aspects of the arbitration process may be affected by misconduct. *Nigeria v. P&ID*, Judgment of the High Court of England and Wales, [2023] EWHC 2638, Oct. 23, 2023.

3. We are concerned that the conduct in question may threaten the enforceability of our existing and potential future awards in certain jurisdictions outside the United States. The conduct also appears intended to intimidate members of the Tribunal either to influence improperly their deliberations or to induce them to resign, which would delay and obstruct the integrity of this proceeding in which hundreds of millions of dollars is at stake. On July

9, 2024, we received an unsolicited email communication from a person in Guatemala City claiming to be an attorney for the estranged wife of the Company CEO, with a subject line lodging a "formal complaint regarding [the Tribunal's] failure to investigate," and asserting in the text that the members of the Tribunal may face "legal consequences for obstruction of justice and aiding and abetting criminal activities." [2]

4. For the reasons already expressed in our Second Partial Final Award ("PFA-2") at p. 14 n. 8, as reinforced by the authorities we cite here[3], the Tribunal continues to understand that under the AAA Rules and applicable law, false and misleading *ad hominem* attacks on arbitrators do not warrant disqualification, impel recusal, or justify vacatur of the arbitrators' awards. That position appears to have been sustained in the decisions of the ICDR and the SDNY concerning this arbitration.

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[2] Earlier today we received a similar email from the same person with the subject line: "Failure to report and investigate Gaitans [sic] Crimes, orders of arrest issued." In contrast to earlier emails from this sender, the July 9 and July 12 emails do not reflect that they were copied to the Parties; if any Party has not received one or both of the July 9 and 12 emails the Tribunal will provide copies on request.

[3] As stated by the Supreme Court of the United States in a judicial recusal context: "[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion. …[O]pinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated, favoritism or antagonism that would make fair judgment impossible." *Liteky v. United States*, 510 U.S. 540, 555 (1994). "The judge who presides at a trial may, upon completion of the evidence, be exceedingly ill disposed toward the defendant, who has been shown to be a thoroughly reprehensible person. But the judge is not thereby recusable for bias or prejudice, since his knowledge and the opinion produced are properly and necessarily acquired in the course of the proceedings….." Id. at 551-52. *Accord*, *In re Reed*, 2016 WL 11880171 at * 107 (Bkr. E.D. Mo. Apr. 20, 2016) ("[H]aving a bias is the condition of having an *improper* predisposition towards someone or something. By contrast, having a lack of respect, is merely the condition of not having esteem for someone or something. Unlike a bias, a lack of respect may be entirely proper, if it is deserved. A person cannot act sanctionably, then demand judicial disqualification because the court develops an understandable lack of respect for that person, based on his sanctionable acts") (emphasis in original); *Republica v. Oswald*, 1 U.S. 319, 326 (Supreme Court of Pennsylvania 1788), wherein the Court rejected as a basis for recusal the personal resentment a judge might feel toward a party that unfairly criticized the judge's conduct, writing: "for if it could, every man might evade the punishment due to his offenses, by first pouring a torrent of abuse upon his judges, and then asserting that they act from passion, because their treatment has been such as would naturally excite resentment in the human disposition."

5. The Tribunal considers that the concerns expressed in this Order should either be validated or dispelled and consequently makes this Order directing the Parties, as described in greater detail below, to provide written (a) submissions disclosing information in their possession concerning the publications and websites, including the identities of those responsible for them, and the circumstances involving the recent unsolicited submissions to the Tribunal by non-parties; and (b) comments addressing what other and further steps the Tribunal should take in regard to these matters. The submissions we direct and the comments we elicit are intended to assist us in assessing what further process if any should be adopted to examine whether one or more Respondents and/or others have engaged in serious misconduct and what remedial steps might be appropriate.

B. RECENT FACTUAL DEVELOPMENTS AND THE SEVERAL QUESTIONABLE WEBSITES

6. The Tribunal has recently discovered that a website called Arbitration Monitor presently features at least three articles pertaining to this arbitration, dated (or bearing "updated" dates of) April 10, April 11 and May 15. The first of these articles came to our attention on or about March 15, 2024, and soon thereafter we forwarded the article to the Parties for comment. The Claimants and the Respondents each submitted in writing through counsel, on March 19, statements that they had no knowledge concerning the website or the article published about this arbitration on the website.

7. The attention paid by the Arbitration Monitor website to the Respondents' contentions about bias of the Tribunal and misconduct by the Company's CEO is aligned with contentions Respondents have made in this arbitration, in the SDNY before Judge Kaplan, in foreign arbitrations that continue despite an anti-arbitration injunction we issued that Judge Kaplan enforced, and in a British Virgin Islands litigation that Judge Kaplan

enjoined. We do not find on the Arbitration Monitor website other content that is similarly partisan in supporting the position of a particular litigant in an arbitration or other proceeding (although we have not studied in detail every article on the site).

8. As the Parties are aware, from prior proceedings in this arbitration, at least two other websites have published articles about this arbitration that raised allegations of misconduct against, respectively, the Chair of the Tribunal -- who was accused of accepting a bribe from the parent company of Claimant AMLQ Holdings in an article on a website called WallStreetWhistleblower.org ("WSW") – and the principals of Claimants Telecom Business Solution, LLC and LATAM Towers, LLC – who were accused of violations of the Foreign Corrupt Practices Act in an article on a website called NewsZoom.click. The WSW website continues to feature its article about the alleged bribery of the Chair on its home page, even though the article originally appeared in March 2022 (a few weeks after issuance of our First Partial Final Award).

9. We also take note that Respondents have submitted as evidence within the past ten days an FBI Internet Crime Complaint made by the Company CEO concerning the publication of articles pertaining to this arbitration or his fitness to act as Company CEO on five other websites and on at least 29 occasions between December 2023 and February 2024. (Ex. R-317 at p. 90).

10. The most recent article we examined on the Arbitration Monitor website dated May 15, 2024 featured evidence ostensibly obtained from the docket of the enjoined BVI action brought by DTH employee and Company CFO Juan Francisco Quisquinay, which appears to correspond to the evidence that Respondents submitted to the Tribunal on May 11, 2024 in support of an emergency motion for the removal from office of the CEO of the Company,

a motion that we denied in Procedural Order No. 2024-13 on May 13. This May 15, 2024 article, including the photographs published as illustrations in the article, also appears to correspond to the material sent to the Tribunal unsolicited by a person named Derick Rodriguez in Guatemala City on June 19, 2024 (who as mentioned above has also written to us again by email on July 9 and July 12, 2024) and may also correspond to the material attempted to be presented unsolicited to the Tribunal in emails from a person named Victor Barrios in Guatemala City in early June.

11. The three websites identified in our prior proceedings (WSW, NewsZoom.click and Arbitration Monitor) share certain characteristics: (1) their ownership and the physical locations of their owners are not readily identifiable from the websites (in the case of Arbitration Monitor, an address is given in Casper, Wyoming that a rudimentary Google search reveals to be a UPS store); (2) their content other than the articles about this case appears not to be focused on the evidence presented or arguments made during an arbitration by a particular party; (3) their content about this arbitration is focused on Respondents' allegations of Tribunal corruption and bias that have been rejected by the ICDR in a challenge context, by the SDNY in the proceedings to vacate and enforce each of our four Partial Final Awards, and in the separate lawsuit that was commenced by Respondents to disqualify the Tribunal; and (4) not one of the identified articles about this case on these websites reported on the fact that these allegations were not successful in removing any of the arbitrators, disqualifying the Tribunal, or causing the SDNY to vacate any of our four awards.

12. The Arbitration Monitor articles suggest that they are based on an unidentified journalist's examination of public court dockets, including material that had recently been placed

publicly on such dockets by Respondents notwithstanding the Parties' past practice in the SDNY to seek leave, which the Court has consistently granted, to file all comparable matters under seal. The articles avoid any mention that Respondents' applications to the Court all failed.

13. In the case of the WSW and NewsZoom.click articles, they purported to be based on information delivered to the websites by whistleblowers within Goldman Sachs and Peppertree, assertions that, in the context of the corroborated denials by Goldman, Peppertree and the Chair, raise the concern that no such whistleblowers actually exist.

C. RESPONDENTS' POTENTIAL ROLE

14. The Tribunal's view is that if the Respondents, or any of them or their agents, are directly or indirectly responsible for the public posting of false and/or materially misleading information on any or all of the three websites (and potentially others such as those mentioned in the Company CEO's 2024 FBI Internet Crime Complaint, referenced above), such surreptitious conduct by or on behalf of any Respondent would constitute grave misconduct. Indeed, we believe such misconduct would violate various provisions of federal criminal law.[4]

15. In addition to the evident alignment of the Respondents' interests with the information published on the three websites, and the publication on the Arbitration Monitor website of information during the brief period after Respondents improperly filed such information

[4] Our concerns are only heightened by Respondents' delivering to the Tribunal last week, as new proffered evidence, a letter from the Company CEO's criminal counsel in Guatemala City (Ex. R-317 at p. 94) stating in pertinent part: "In both Guatemala and El Salvador, as in most of Latin America, fake news are a weapon used in legal procedures and social pressure - with fake news sites popping up continually with made up stories, serving for character assassination, emotional distress, and pressuring victims to yield, and as supporting evidence in trials that lack rule of law procedures." (par. 5, slightly revised for clarity).

on the public court docket and before the Court ordered it to be sealed, additional facts support the reasonableness of an inference that one or more Respondents may bear responsibility for the conduct associated with the websites. Such facts include but are not limited to:

a. Respondents' pursuit of allegations of criminal and other misconduct by the CEO of the Company, conjoined with their failure to submit any evidence of such misconduct in the hearings leading to our Second Partial Final Award (PFA-2) when we specifically called upon Respondents to provide such evidence[5];

b. The findings of fact we made in PFA-2 concerning (i) Respondents' role in advancing false accusations of criminality as the basis for prosecutions of the Company CEO in Guatemala, and (ii) the involvement of certain of Respondents' co-counsel in the creation or advancement of false evidence of the Company CEO's alleged misconduct, which led to the sanction requiring appointment of Submission Counsel in PFA-2.

c. Respondents' bringing the existence of the WSW report of bribery of the Chair by Goldman Sachs to the attention of Claimants, and their subsequent insistence on defending the plausibility of the WSW report in the face of the Chair's clear and detailed denial and of Goldman's report of its internal investigation, including Respondents' filing an unusual purported forensic expert affidavit asserting that

[5] To this we now add the written report of the Company's Counsel on July 11, 2024 that, according to the Company CEO, an arrest warrant in Guatemala may be about to be served upon him that would prevent him from attending in person the merits hearings in this case that he had planned to attend, and that he was notified of such impending delivery by an officer of the Respondents, Mr. Porras.

Goldman's inquiry was flawed in failing to identify a theoretical prior account at Goldman maintained by the Chair.

d. The fact that we determined in PFA-2 that Respondents submitted an Opinion Letter to the Tribunal from Morrison & Foerster (purporting to advise the Company about the compliance risks of permitting the Company CEO to continue as the Company's FCPA compliance officer) that had effectively been obtained from Morrison & Foerster under false pretenses through a series of material factual omissions, facilitated by certain of the Respondents' then-counsel of record in this arbitration.

e. The withdrawal as co-counsel for the Respondents of six different law firms during the course of this arbitration – which has now been followed, even as this Order was being prepared, by the withdrawal or termination of all the many counsel who have heretofore represented the Respondents, and in one instance a re-designation of one of the co-counsel as a "party representative" -- all on the eve of the impending evidentiary hearing. We perceive that these changes were designed to remove the role of Submission Counsel under our Second Partial Final Award ("PFA-2) and the Judgment enforcing it. As we imposed the requirement of Submission Counsel to provide some assurance that Respondents' misconduct would not recur, we cannot help but be concerned by the most recent reconfiguration of Respondents' counsel that obviates the obligation of designation of any Submission Counsel under the terms of PFA-2.

f. The fact that Respondents pursued a separate lawsuit to seek disqualification of the Tribunal despite the provision in the AAA Commercial Rules (Rule R-18(c) in the 2013 Rules applicable to this case) that makes the AAA-ICDR decision on a challenge, which we understand that Respondents had already attempted, conclusive.

g. The fact that Respondents have expressed in many ways a preference to resolve their disputes with Claimants - including notably disputes concerning the status and conduct of the Company CEO - by means other than this arbitration, including (1) bringing a lawsuit involving claims of legal malpractice against the Miami law firm that represents the Company and takes instruction from the Company CEO, (2) declining to comply with our Orders and Awards – many of them derivative of our proceedings concerning the status and conduct of the Company CEO – even though this has resulted in a sanction that prevents Respondents from pursuing their counterclaims until they comply; (3) seeking to re-litigate the determinations we have made concerning the status and conduct of the Company CEO by having Mr. Quisquinay bring a lawsuit in the British Virgin Islands[6], (4) permitting (if not

[6] As to the BVI civil action (that Respondents ultimately caused to be withdrawn by Mr. Quisquinay, but only several months after it had been enjoined by Judge Kaplan), we have a concern that the principal motivation for the filing in the BVI action of Mr. Sagastume's affidavit and its exhibits on May 10, 2024, the day before their use in this arbitration in support of Respondents' "emergency" motion to remove the Company CEO from office, was not - as was reported to the Tribunal by Respondents in that motion on May 11- opposition to the costs application of the Company's CEO, but that the true motive may have been to situate this evidence on a public judicial docket so that Arbitration Monitor (and perhaps other websites) could claim to have found it there. In similar vein, we have a concern about the filing by Respondents' then-co-counsel, Juan Rodriguez, on March 19, 2024, improperly on the public docket of the SDNY case in which the Court had already denied Respondents' petition to disqualify the Tribunal on February 20, 2024, and ostensibly in support of a motion for reconsideration made on the last day before the deadline for filing a Notice of Appeal, of a copy of Respondents' unsuccessful ICDR bias

indeed causing) officers of Company subsidiaries to pursue separate arbitrations in several Central American countries, despite an injunction we imposed that the SDNY enforced, to determine a central disputed issue in Phase 2 of this arbitration before we reach it, i.e. the scope of Claimants' obligation to approve proposals for the construction of new Towers by the Company, and (6) refusing to produce evidence that the Tribunal ordered to be produced, even at the risk of having adverse inferences drawn (*see* PFA-2) and potentially to be drawn (*see* Procedural Order No. 2024-10) based on their noncompliance.

h. The fact that the Tribunal has received on at least five occasions in the past several weeks, most recently earlier today, unsolicited submissions from purported Guatemala City lawyers who are not counsel in this arbitration, purporting to represent and relay information from the estranged wife of the Company CEO, accusing the Company CEO of misconduct and, especially in the July 9 and July 12 submissions, threatening that the Tribunal members could face "legal consequences for obstruction of justice and aiding and abetting criminal activities" if we should fail to investigate the allegations allegedly made by the estranged wife of the Company CEO.

D. NEXT STEPS

16. Accordingly, we direct the Parties to submit, on or before July 26, 2024, sworn statements accompanied by relevant documents that provide any and all information the Parties

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challenge against the Chair. This was followed on March 22, 2024 by an article on the Law360 website focused on Respondents' allegations of bias against the Chair.

currently have concerning the publication of the articles referenced in this Order, the nature, origin, ownership and control of the websites on which they appear, and the circumstances involving the recent unsolicited submissions of information to the Tribunal from non-parties.

17. The questions to be addressed in the written submissions include: (a) the identities of the publishers of the three websites identified in our prior proceedings and any or all of the additional websites identified in the Company CEO's 2024 FBI Internet Crime Complaint and any other similar publications or websites of which any Party is aware; the authors of the articles on such sites that relate to this proceeding, the Tribunal or the Parties, and the facts and circumstances by which such information came to be published on such sites, including whether the Tribunal's concerns based on the information described in this Order that one or more of the Respondents may be responsible for such publications are well-founded; and (b) the facts and circumstances by which recent information concerning the Company CEO have been supplied, unsolicited, to the Tribunal, much of which has now been proffered as evidence by Respondents, along with threats apparently seeking to intimidate the Tribunal.

18. The Parties are also invited to comment, on or before July 26, 2024, on appropriate and available additional procedures the Tribunal might adopt to advance an understanding of the operative facts, and the remedies to terminate and reverse this ongoing misconduct that might be pursued if warranted, including not only steps to be taken within this arbitration but possibly also referral to federal law enforcement authorities in New York or elsewhere. Within these comments, we direct that the Parties offer their views on whether the Tribunal has authority, under Rule R-36 or otherwise, to conduct an investigation into the matters to

be addressed in the requested submissions, including by designating an independent investigator (as requested with respect to other topics in the unsolicited emails submitted by attorney Derick Rodriguez allegedly transmitting a communication of the estranged wife of the Company CEO).

SO ORDERED this 12th day of July, 2024

Marc J. Goldstein, for the Tribunal